

#EO-1760  
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**MEMORANDUM OF AGREEMENT**

**BETWEEN THE SURFACE TRANSPORTATION BOARD,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE, AND UNION  
PACIFIC RAILROAD COMPANY**

**REGARDING AB 33 Sub-No. 255  
UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN SCOTT AND CARVER COUNTIES, MINNESOTA**

**WHEREAS**, on December 11, 2007, UNION PACIFIC RAILROAD COMPANY (UP) filed a petition for exemption with the Surface Transportation Board (Board) under 49 C.F.R. § 1152 to abandon an approximately 5.60 miles rail line between Milepost 38.6, at Merriam, to milepost 33.0, on the east side of Chaska, in Carver and Scott Counties, Minnesota, in Docket No. AB 33 (Sub-No. 255); and

**WHEREAS**, in a Decision served on April 1, 2008, the Board's Section of Environmental Analysis (SEA) recommended that the Board impose the following historic preservation condition: UP shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the right-of-way that are eligible for listing or listed with in the National Register until the section 106 process of NHPA has been completed, report back to SEA regarding any consultations with the SHPO and the public, and not file its consummation notice or initiate any salvage activities until the section 106 process has been completed; and

**WHEREAS**, the City of Carver (City) requested consulting party status; and

**WHEREAS**, based on consultation with the Minnesota State Historic Preservation Office (SHPO), the Board's SEA determined that the line is eligible for the National Register of Historic Places (National Register); and

**WHEREAS**, the Board's SEA has consulted with the SHPO, pursuant to 36 C.F.R. § 800, regulations implementing Section 106 of the NHPA, and has determined that the proposed abandonment will have an effect on the above mentioned historic resource, which is eligible for listing in the National Register; and

**WHEREAS**, the SHPO concurred with SEA's determination of adverse effect; and

**WHEREAS**, SEA notified the Advisory Council on Historic Preservation (ACHP) that an adverse effect determination had been made; and

**WHEREAS**, the ACHP has declined to participate at this time; and

**WHEREAS**, the Board's SEA, Army Corps of Engineers, St. Paul District (Corps), SHPO, UP, and City of Carver have agreed that the bridge crossing the Minnesota River located at milepost 36.17 is a significant flood hazard to the City and should be removed as soon as possible; and

**WHEREAS**, UP shall acquire all necessary permits and comply with all requirements and regulations of the of the Corps before initiating any demolition/salvage activities regarding the above mentioned bridge; and

**WHEREAS**, the City has entered into negotiations with UP regarding the following: a) selling the railroad bridge over Main Street to the City; and b) selling the right-of-way within the City limits to the City; and

**WHEREAS**, it is understood that neither SEA nor the SHPO can participate in any said negotiations between UP and the City and that UP can terminate negotiations at anytime; and

**WHEREAS**, the City has expressed concerns regarding salvage activities and its impact on the integrity of the City's levee system; and

**WHEREAS**, the Board's SEA has consulted with the SHPO, UP and the City pursuant to Section 36 C.F.R. § 800.6 regarding ways to avoid, minimize, or mitigate effects to the historic resource as a result of the abandonment and disposition of UP's assets;

**NOW THEREFORE**, the Board, UP, and SHPO agree that the execution of this Memorandum of Agreement (MOA) by the parties hereto and its subsequent submission to the Advisory Council on Historic Preservation (Council) in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with the Council for the purposes of Section 110(1) of the NHPA. Execution and submission of the MOA, and implementation of its terms, evidences that the Board has afforded the Council an opportunity to comment on the proposed action relating to the line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

## **STIPULATIONS**

### **I. MITIGATION**

A. As mitigation for deconstruction of the Minnesota River Bridge UP shall complete Minnesota Historic Properties Record for the property subject to the provision outlines below. All documentation shall be completed by an architectural historian meeting the *Professional Qualification Standards* in the *Secretary of the Interior's Standards and Guidelines*. The documentation shall be completed as stipulated below.

1. Prior to removal of any portion of the Minnesota River Bridge, UP shall complete Minnesota Historic Properties Record Level 1 documentation.
    - a. Complete a Level 1 Minnesota Historic Properties Record photographic documentation of the existing structure. This documentation shall complete large format photography that meets the Minnesota Historic Properties Record Guidelines.
    - b. UP will submit a xerographic copy of the photographic documentation to SHPO for review; pending SHPO approval, two sets of the photographic documentation with original negatives and two sets of xerographic copies will be prepared.
    - c. The SHPO will determine whether the documentation meets the standards stipulated.
  2. After the photographic documentation has been approved by SHPO, UP may begin demolition/salvage operations.
  3. UP's architectural historian shall provide a written history of the Minnesota River Bridge to the STB and the SHPO for review. The SHPO shall approve this written history in writing prior to completion of this portion of the documentation.
  4. UP shall compile the final Level 1 Minnesota Historic Properties Record photographic and written documentation and submit it to the SHPO within one year of the execution of this MOA. The SHPO shall determine if the documentation is complete and notify the STB of its completeness determination.
- B. UP has provided a description of how demolition and salvage operations would take place and stipulates that all precautions will be taken to prevent harm to the City's levee system (see Attachment 1).

## **II. RESERVATION OF RIGHTS**

Nothing in this agreement is intended to waive the sovereign immunity of any party nor limit any party to bring any cause of action against any other in a court of competent jurisdiction.

## **III. DISPUTE RESOLUTION**

Should any signatory to this Agreement object to any action(s) or plans provided for review pursuant to this Agreement, the STB shall consult with the objecting party within 30 days to resolve the objection. The objection must be specifically identified, and the reasons for objection documented. If the STB determines that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the Council and notify SHPO as to the nature of the dispute. Within 30 days of receipt of all pertinent

documentation, the Council shall either:

- A. Provide the STB with recommendations which the STB shall take into consideration in reaching a final decision regarding the dispute; or
- B. Notify the STB that it will comment within an additional 30 days in accordance with 36 C.F.R. § 800.7(b). Any Council comment provided in response to such a request will be taken into account by the STB in accordance with 36 C.F.R. § 800.7(b)(4) with reference to the subject of the dispute.
- C. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. STB responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

#### **IV. AMENDMENT**

Any signatory to this Agreement may request that it be amended, whereupon the parties will consult to consider such amendment in accordance with 36 C.F.R. § 800.

#### **V. TERMINATION**

Any signatory may terminate the Agreement by providing 30 days' notice to the other parties, provided that the parties will consult during that period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the STB will comply with 36 C.F.R. § 800.3 through 800.6.

#### **VI. FAILURE TO CARRY OUT THE TERMS OF AGREEMENT**

In the event that the terms of this Agreement are not carried out, the STB shall comply with 36 C.F.R. § 800.3 through 800.6 with regard to individual actions covered by this Agreement.

#### **VII. DURATION**

If the terms of this MOA have not been implemented by July 31, 2012, this MOA shall be considered null and void. In such an event, the STB shall notify the parties to this MOA, and if it chooses to continue with this undertaking, shall re-initiate review of this undertaking in accordance with 36 C.F.R. § Part 800.

**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Victoria Rutson  
Chief, Section of Environmental Analysis

**MINNESOTA HISTORICAL SOCIETY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Britta L. Bloomberg  
Deputy Minnesota State Historic Preservation Officer

**UNION PACIFIC RAILROAD COMPANY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Union Pacific *Darin J. Bain* 8-9-10

**INVITED SIGNATORIES:**

**CITY OF CARVER, MINNESOTA**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
City of Carver

# **ATTACHMENT 1**

## **Salvage Plan at Carver, MN.**

### **Removal Operations:**

Initial removal would begin and consist of removing rail, ties and all associated track material across the Minnesota River including the Minnesota River Bridge as this is the only access to this portion of track. The next phase would consist of UP's contractor to begin removal of the Minnesota River Bridge and working backwards, toward the City of Carver, MN.

UP anticipates that removal of Minnesota River Bridge would take approximately 6-10 weeks.

Bridge approach pilings would be cut 1-2 feet below grade and void filled back in with "like" material and per Army Corp. of Engineer's requirements and guidelines. Pilings within the Levee would also be cut 1-2 feet below grade and void filled with "like" material per Army Corp. of Engineers requirements and guidelines. The physical strength and structure of levee would not be compromised during this portion of the removal operation. UP's contractor would stockpile all material on UP's property or haul material to a location that the contractor would lease from a private party until final disposition of material.

### **Main St. Bridge:**

#### **Salvage process if the bridge is left in place:**

The process for leaving Main St. Bridge in place would consist of removal of all rail and other track material with "deck" of bridge and remaining supports left in place. The ballast section approach on each side of bridge would be left in place and graded level.

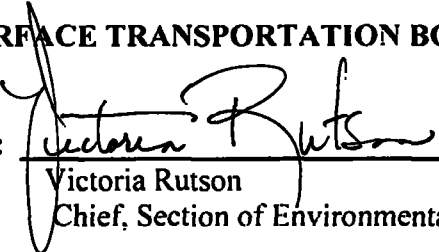
#### **Salvage process if the bridge is removed:**

All rail and other track material to be removed as well as entire Bridge Structure itself. Wood pilings within the levee would be cut 1-2 feet below grade with "like" material replaced in void. Block bridge supports on each end of bridge would be removed to the level of adjacent concrete wall work which is located off each end of the block bridge supports and borders asphalt of Main St. (approximately 3 ½ feet in height). "All" ballast within the City's limits would remain in place with a level grade left once track material has been removed. The City of Chaska, MN, has elected to have "All" ballast removed.


**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

BY:  DATE: 8/19/10  
Victoria Rutson  
Chief, Section of Environmental Analysis

**MINNESOTA HISTORICAL SOCIETY**

BY:  DATE: 8/9/10  
Britta L. Bloomberg  
Deputy Minnesota State Historic Preservation Officer

**UNION PACIFIC RAILROAD COMPANY**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Union Pacific

**INVITED SIGNATORIES:**

**CITY OF CARVER, MINNESOTA**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
City of Carver

**ACCEPTED AND AGREED**

**SIGNATORY PARTIES:**

**SURFACE TRANSPORTATION BOARD**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Victoria Rutson  
Chief, Section of Environmental Analysis

**MINNESOTA HISTORICAL SOCIETY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Britta L. Bloomberg  
Deputy Minnesota State Historic Preservation Officer

**UNION PACIFIC RAILROAD COMPANY**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Union Pacific

**INVITED SIGNATORIES:**

**CITY OF CARVER, MINNESOTA**

**BY:** \_\_\_\_\_ **DATE:** 8-16-10

City of Carver